

# EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK  
CENTRAL ISLIP DIVISION**

**APTIVE ENVIRONMENTAL, LLC**

**Plaintiff,**

**VS.**

**VILLAGE OF EAST ROCKAWAY,  
NEW YORK**

**Defendant.**

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**NO. 1:18-cv-**\_\_\_\_\_

STATE OF TEXAS §

**COUNTY OF DALLAS**                      §

Pursuant to 28 U.S.C. § 1746, I, Jeremy Fielding, declare as follows:

I am over the age of twenty-one (21). I have never been convicted of a felony. I am of sound mind and fully competent to make this Declaration. The facts stated herein are true and correct based on my personal knowledge.

1. I am an attorney at the law firm of Lynn Pinker Cox & Hurst, LLP, located at 2100 Ross Ave., Ste. 2700, Dallas, TX, 75201. Together with other attorneys at this firm, I serve as counsel to Plaintiff Aptive Environmental, LLC. I am familiar with the matters set forth herein by virtue of my role as one of the attorneys in the above-captioned suit.

2. I am personally familiar with the correspondence to date that Aptive's counsel has had with the Village Attorney of East Rockaway, New York. True and correct copies of that correspondence are attached to the Complaint at Exhibit G.

3. On May 20, 2019, I transmitted a letter to the East Rockway Town Attorney, John Ryan, identifying the various unconstitutional provisions of § 171 of the Village Code. The letter requested immediate repeal and amendment of these provisions. A true and correct copy of this letter is attached to the Complaint at Exhibit E.

4. On May 20, 2019, the Village Attorney responded by email to my email dated that same day stating that he could recommend to the East Rockway Trustees that they amend their Code. While agreeing to recommend amending the Village Code, the Village Attorney did not address the paramount concern of Aptive—immediate suspension of the Ordinance and prompt issuance of licenses when Aptive applies.

5. On May 20, 2019, an Interim Agreement and Model Ordinance was emailed to the Village Attorney to aid East Rockaway in amending their Ordinance.

6. At the request of the Village Attorney, John Ryan, we spoke by telephone on May 21, 2019 in an attempt to resolve these issues. During our conversation, I confirmed that an amendment or immediate suspension of the Village's solicitation ordinance would be necessary to avoid the need for a lawsuit. Mr. Ryan promised to pass his recommendation along to his client and confirm that it had been accepted.

7. On June 5, 2019, a final email was sent to Mr. Ryan on June 5, 2019 advising him that Aptive intends to file a lawsuit and Temporary Restraining Order against East Rockaway on Thursday, June 6, 2019 unless written confirmation was received advising that the Village would immediately suspend enforcement of its 5:00 p.m. solicitation curfew, its \$2,500 bond requirement and its unconstitutional licensing process.

8. Section 171 of the East Rockway Village Code regulates peddling and soliciting. A true and correct copy of this chapter is attached at Exhibit A to the Complaint.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of June, 2019 in Dallas, Dallas County, Texas.

A handwritten signature in black ink, appearing to read "Jer", with a long horizontal line extending to the right.

Jeremy A. Fielding